

INSTRUCTION NO. ____

In order to prevail on her § 1983 claim against the defendant Sheriff Gary Toelke, alleging liability based on a policy of failure to train its corrections officers, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. the acts of defendant Damon Berti deprived the plaintiff of her particular rights under the United States Constitution as explained in later instructions;
2. defendant Berti acted under color of law;
3. the training policies implemented by defendant Sheriff Gary Toelke, for male corrections officers and their unsupervised contact with female inmates were not adequate to train its corrections officers to handle the usual and recurring situations with which they must deal;
4. the defendant Sheriff Gary Toelke, was deliberately indifferent to the obvious consequences of its failure to train its male corrections officers adequately; and
5. the failure of the defendant Sheriff Gary Toelke, to provide adequate training caused the deprivation of the plaintiff's rights by the defendant Damon Berti; that is, the defendant's failure to train is so closely related to the deprivation of the plaintiff's rights as to be the moving force that caused the ultimate injury.

A person acts "under color of law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation.

"Deliberate indifference" is the conscious choice to disregard the consequences of one's acts or omissions. The plaintiff may prove deliberate indifference in this case by showing that Defendant Sheriff Gary Toelke's failure to train male corrections officers in regards to what

physical contact with female inmates is allowed or appropriate is so likely to result in a violation of constitutional rights that the need for training is patently obvious.

If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements she is required to prove under Instruction _____, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant.

Ninth Circuit Model Civil Jury Instructions, 9.7

Section 1983 Claim Against Local Governing Body Defendants Based On Policy of Failure to Train – Elements and Burden of Proof

Thelma D. v. Bd. Of Educ. Of St. Louis, 934 F.2d 929, 934 (Eighth Circuit, 1991)

City of Canton v. Harris, 489 U.S. 378, 389-390 (1989)

Modified

Submitted by Plaintiff